

BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:
RAFAT SHIRINZADEH, P.T.
Pasco, Washington 99301

Case No. ID 2007 65651

OAH No. 2008040380

Physical Therapist License No. PT 23416

Respondent.

PROPOSED DECISION

On September 22, 2008, in Sacramento, California, Ann Elizabeth Sarli, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Jessica Amgwerd, Deputy Attorney General, represented complainant.

Respondent Rafat Shirinzadeh was represented by Michael O'Donnell, Attorney at Law.¹

Evidence was received, the record was closed and the matter was submitted on September 22, 2008.

FACTUAL FINDINGS

1. On January 18, 2008, complainant, Steven K. Hartzell, made and filed the Accusation in his official capacity as the Executive Officer of the Physical Therapy Board of California (Board), Department of Consumer Affairs.

2. Respondent timely filed a Request for Hearing pursuant to Government Code sections 11504 and 11509. The matter was set for an evidentiary hearing before an Administrative Law Judge of the Office of Administrative Hearings, an independent adjudicative agency of the State of California, pursuant to Government Code section 11500 et seq.

¹ Respondent and his counsel appeared telephonically.

3. The Board Issued Physical Therapist License Number PT 23416 to Rafat Shirinzadeh (respondent) on August 14, 1998. The license was current at all times relevant herein.

4. Respondent is a graduate of Loma Linda University School of physical therapy. He initially practiced physical therapy in California, but relocated to the state of Washington. He obtained a physical therapy license from the state of Washington in October 1998. He was a co-owner of Oasis Physical Therapy, a physical therapy practice, in Kennewick, Washington.

5. On April 13, 2007, the State of Washington Department of Health, Board of Physical Therapy (Washington Board) filed a Statement of Charges against respondent and sought to discipline his physical therapy license. A full evidentiary hearing was held from August 27 through August 30, 2007. Respondent appeared and was represented by counsel.

6. A certified copy of the record of the disciplinary action taken against respondent by the Washington Board, including findings of fact, conclusions of law and final order, was admitted in evidence.

7. On October 26, 2007, the Washington Board made Findings of Fact based upon clear and convincing evidence. The Washington Board's Findings of Fact are summarized as follows.

Patient B was referred to respondent for treatment of jaw pain. During the first appointment, respondent told Patient B that she had stress in the neck and back. He treated her four times in July and August of 2006. During the fourth appointment respondent advised Patient B that he would need to lower her sweatpants. He positioned patient on her back and lowered her pants below the pelvic area. He then laid his hand on her pubic bone and pressed on her stomach. The Washington Board found that "the treatment of Patient B in the pelvic area greatly exceeded the diagnosis of jaw pain and stress in the neck and back, and there was no therapeutic purpose for it. Respondent should have ceased treatment after addressing the problems listed in the referral. His action of lowering the patient's pants and treating the pelvic area was not warranted and was below the standard of care."

Patient C, a seven-year-old female was referred for complaints of a tight Achilles' tendon and foot pain. She was treated in July and August of 2006. During the examination of Patient C, respondent lifted her shirt and felt her spine. He advised her mother that she had scoliosis. Respondent asked Patient C's mother for permission to pull down her daughter's pants. Patient C's mother granted permission • if necessary. Respondent then pulled Patient C's pants down to the bottom of the buttocks, exposing the entire buttocks. Respondent then placed his thumbs inside of the gluteal cleft of Patient C. The Washington Board found that "respondent acted below the standard of care... a child of this age should not be disrobed, and the

respondent should not have been touching the gluteal cleft when treating an Achilles' tendon and foot.”

Patient D was an employee of respondent. Respondent treated Patient D twice in April 2006 and twice in August 2006. After one session, respondent asked Patient D to rub his back. She complied. The Washington Board found that “A physical therapist should not allow or encourage a patient/employee to provide a back rub to the physical therapist. The Board finds such conduct to be inappropriate and a boundary violation.” Additionally, the Washington Board found that respondent did not chart his treatments of Patient D and that such omission was below the standard of care.

Patient E was an employee of respondent. He treated her for back pain in March 2006. Respondent pulled the patient's pants down to the gluteal crease and performed an ultrasound on her buttocks. He did not drape the patient. The Washington Board found that respondent's actions of exposing the patient's buttocks and failing to drape the patient were a boundary violation and below the standard of care. The Washington Board also found that respondent called Patient E into a treating room to discuss an administrative matter while Patient E was serving in her capacity as an employee. Patient E observed that respondent was treating a female patient who was naked from the waist up, with no draping. The Washington Board found this conduct of failing to properly drape the patient was below the standard of care.

Patient F was a former employee of respondent. He treated Patient F on three occasions in 2004 for an injury to her rib cage. During each session, respondent would have Patient F remove her shirt and bra. Respondent would then ultrasound the patient's sternum and left breast. The Washington Board found that there was no clinical reason to ultrasound the breast and that an ultrasound of the sternum creates risks to the patient in the event the patient has a heart condition. Additionally, the Washington Board found that respondent did not chart this treatment of Patient F. The Washington Board found respondent's conduct was below the standard of care.

Patient G was a former employee of respondent. He treated her on one occasion in 2004 for pain and numbness in her shoulder and back. The patient removed her shirt and bra and wore a gown. During the treatment, respondent gradually worked the gown up under the patient's chin so that her breasts were exposed. Respondent rubbed lotion on the patient's chest and lifted a breast out of the way in order to complete the treatment. The Washington Board found there was no therapeutic purpose for respondent to touch Patient G's chest, as such treatment was not related to the injury. The Washington Board found that it was never appropriate for a physical therapist to lift a patient's breast and the standard of care calls for a therapist to request the patient to lift her own breast when it is necessary. The Washington Board also found that respondent did not chart his treatment of Patient G and that omission was below the standard of care.

Patient H was an employee of respondent. In September 2006, respondent asked Patient H if she needed treatment. She stated that she did not. Respondent persisted and eventually Patient H agreed to a treatment session. Respondent asked the patient to wear a gown and she declined. During treatment, respondent had the patient lie on her stomach. He then pulled patient's tank top up past her breasts to her neckline and told her to roll onto her side. He then massaged her exposed breast. He instructed her to a roll onto her other side and then massaged the other breast. Respondent then instructed Patient H to roll onto her back and undo her pants. The patient initially refused but respondent persisted. Patient H reluctantly pulled her pants down to her gluteal fold. Respondent then worked on the patient's inner thighs. After patient H had dressed, respondent gave her a hug. Respondent did not chart this treatment of Patient H. The Board found respondent's conduct to be below the standard of care.

8. The Washington Board found by clear and convincing evidence that respondent had violated numerous laws and regulations governing the conduct and activities of licensed physical therapists in that state. The Washington Board found respondent had violated RCW 18.130.180 (1), (4), (7) and (24) (Unprofessional Conduct) and WAC 246 -915-182 (1) (Unprofessional Conduct-Sexual Misconduct) and WAC 246-915-200 (Physical Therapy Records). The Washington Board suspended respondent's license to practice as a physical therapist in the State of Washington for a period of 36 months, commencing October 26, 2007, with no right to apply for early reinstatement. The Washington Board also ordered that within six months prior to reinstatement respondent shall be evaluated by a board approved psychologist or psychiatrist and that should he be reinstated he would be subject to conditions including a prohibition on solo practice and employment of a chaperone with female patients.

9. Respondent testified at hearing that he had worked as a physical therapist in Washington for 10 years. He is currently living in Washington. He pointed out that 60 percent to 65 percent of his patients were female and that the only patients who complained about him were office staff, with the exception of a mother of an employee and the niece of an employee. He noted that none of the complaining witnesses were "off the street." He implied that the witnesses were lying and had an employment related score to settle with him. He testified that if he could retry the matter he could prove that the Washington Board made its decision based on prejudice. He testified "At no time during my professional practice have I ever done anything to harm the patient, nor done anything inappropriate or anything not taught."

10. Respondent testified that he has not worked since February 2008, although he has stayed current with his continuing education requirements. He is a stay-at-home dad for his three children. His wife works as a dental hygienist. He would have a difficult time paying the Board's costs, because their income is limited

to about \$4,300 a month.

The parties were advised that the Administrative Law Judge would take evidence relating to the factors set forth in *Zuckerman v. Board of Chiropractic Examiners* (2002) 29 Cal.4th 32. The parties were advised that these factors would be considered in determining the reasonableness of costs. These factors include: whether the licensee has been successful at hearing in getting charges dismissed or reduced, the licensee's subjective good faith belief in the merits of his position, whether the licensee has raised a colorable challenge to the proposed discipline, the financial ability of the licensee to pay, and whether the scope of the investigation was appropriate to the alleged misconduct.

Complainant established that the reasonable and necessary costs of investigation and prosecution of this matter were \$2,686. Complainant established that the scope of the investigation was appropriate to the alleged misconduct and it was successful in bringing this action.

Although respondent established that his income was significantly reduced since his Washington license was suspended, his wife earns a moderate income and he is able to work outside the home in another field. Therefore, respondent did not establish that he did not have the financial ability to pay the costs incurred in the investigation and prosecution of this matter.

LEGAL CONCLUSIONS

1. Business and Professions Code² section 2660 provides in pertinent part that the Board may, after the conduct of appropriate proceedings under the Administrative Procedures Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, for unprofessional conduct including gross negligence, violation of any provisions of this chapter and commission of verbal abuse or sexual harassment. Section 726 provides in pertinent part that the commission of any act of sexual abuse, misconduct, or relations with the patient, client, or customer constitutes unprofessional conduct and grounds for disciplinary action for any person licensed under this division.

2. Section 141 provides in pertinent part that for any licensee holding a license issued by a board under the jurisdiction of the Department, a disciplinary

² All statutory references are to the California Business and Professions Code unless otherwise indicated.

action taken by another state for an act substantially related to the practice regulated by the California license may be grounds for disciplinary action by the respective California licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state shall be conclusive evidence of the events related therein.

3. As set forth in Factual Findings 1 through 8 and Legal Conclusions 1 and 2, respondent's license to practice physical therapy was disciplined by the Washington Board and he was suspended from the practice of physical therapy based upon findings of sexual misconduct, including moral turpitude and sexual acts with multiple patients or clients, and negligence or malpractice with respect to multiple patients or clients. Accordingly, pursuant to sections 141, subdivision (a), section 726, and section 2660, cause exists by clear and convincing evidence to discipline respondent's license.

4. Section 2661.5 provides in pertinent part that the Board may request the Administrative Law Judge to direct any licensee found guilty of unprofessional conduct to pay to the Board a sum not to exceed the actual and reasonable costs of the investigation and prosecution of the case. As set forth in Factual Finding 11, the actual and reasonable costs of the investigation prosecution of the case were \$2,686.

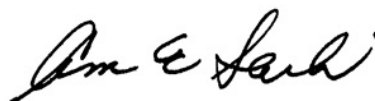
5. As set forth in Factual Findings 1 through 10, respondent denied culpability for his conduct, failed to demonstrate justification or mitigation of his conduct and failed to show rehabilitation. Given these facts and the fact that his misconduct was recent, repetitive and involved multiple patients, it would be against the public interest to permit respondent to retain his physical therapist license under any conditions.

ORDER

Physical Therapist License No. PT 23416 issued to Rafat Shirinzadeh is REVOKED.

Rafat Shirinzadeh shall reimburse the Physical Therapy Board the sum of \$2,686, within 30 days of the effective date of this Decision. The Board may in its discretion permit respondent to make installment payments.

Dated: October 16, 2008

A handwritten signature in black ink, appearing to read "Am E. Lark", is written over a horizontal line.

ANN ELIZABETH SARLI
Administrative Law Judge Office
of Administrative Hearings